

REMARKS

In the Official Action dated September 9, 2002, it was indicated that Claims 1, 2, 10 and 18-48 are pending in the Application. Method Claims 1, 2 and 33-47 were withdrawn from consideration and Claims 10, 18-32 and 48 were rejected. By this Amendment, Claims 19 and 20 have been cancelled without prejudice and, in effect, replaced by Claims 49 and 50. Claims 47 and 48 have also been cancelled and replaced, in effect, by Claims 51 and 52. Dependent Claim 53 has been added. A new Figure 4 is submitted herewith which illustrates in red an embodiment of the invention with a promotional display indicated thereon. Reference to new Figure 4 is also set forth by amendment in the Specification (Substitute Specification). In addition a next to last paragraph has been inserted on page 8 at the end of the Specification, on page 8 that states --The term "sleeve" as used in the claims refers to a structure that is open at both ends and does not include a cap, as such.--

The invention is directed to sleeves composed of insulating material which are received by posts that are usually made of steel for the purpose of supporting wires of an electrified fence, although they may also be used to support wires which are not electrified. The sleeves fit over the entire length of the posts extending above the surface at the site and thus not only support the fence, as such, but also protect the posts from rust and corrosion. Separate caps are also provided which fit over the tops of the sleeves which can be used for pounding the sleeves onto the post and preventing water or other corrosive materials from entering the space between the sleeves and the posts on which they are mounted. The sleeves have webs which have openings for receiving the wires which form the fence. The sleeves are preferably extruded and thus relatively inexpensive to produce and also may be cut to appropriate lengths so that they protect the entire fence post above ground from rust or corrosion. Thus the fence post according to the

invention provides not only a connection for an electrified fence or other type of fence made up of wires, but also provides protection for the post over which it is fitted. Another advantage is that the webs may receive a plurality of wires which not only makes the fence more effective for retaining or preventing the entry of animals of different sizes, but also provides a quick fix in case a strand which is electrified should be broken, whereby another strand can then be easily electrified or, alternatively, a plurality of wires with individual fuses can be electrified in parallel whereby a break or short in one wire will not make the fence inoperative for its purposes.

In the Official Action, concerning priority of the invention, it was noted that the Applicant had not filed a certified copy of the PCT Application. The undersigned has been informed by Applicant's counsel in New Zealand that a certified copy of both the PCT Application and the New Zealand Application, which was filed July 14, 1999, are being obtained and will be forwarded to us in the near future whereupon we will submit them separately with a claim of priority for inclusion in the file in the instant Application.

Also the drawings were objected to with the statement that the means for receiving a promotional display must be shown or the feature cancelled from the claims. Accordingly, a new Figure 4 is submitted herewith which shows --promotional display-- on the sleeve. In actuality, it will be appreciated that what is received on the sleeve will not be the words --promotional display-- but will be something else such as, for example, the name of the farm or ranch on which the invention is being used or advertisements of almost any thing as well known in the art. Clearly no new matter is being added.

On page 3, paragraph 4, Applicant was reminded of the proper language and format for an Abstract of the Disclosure. However, no specific criticism was set forth and it is submitted

that the Abstract of the Disclosure as appended on page 6 of the Preliminary Amendment is acceptable.

Claims 19 and 20 were also objected to as being in the improper dependent form for failing further to limit the subject matter of a previous claim. Accordingly, Claims 19 and 20 have been cancelled and replaced by Claims 49 and 50 which, it is submitted, meet the objection set forth in the Official Action.

Claim 10 and Claims 18, 19 (now Claim 49), 20 (now Claim 50), Claims 21-53, Claims 56-62 and 48 (now Claim 52) were rejected on the basis of U.S. Patent No. 4,520,231, which issued May 28, 1985, to Hubbell, under 35 U.S.C. §102. However, Hubbell is directed to a molded safety cap for posts wherein a hollow body received by a fence post having a "T" cross section is integral with a dome shaped cover closing one end. Although it is submitted that the word "sleeve" inherently means that Applicant's sleeve is open at both ends, a paragraph has been inserted on page 8 of the Specification (Substitute Specification) to this effect. Thus Applicant's invention, as claimed, clearly is distinguished over the disclosure of the Hubbell patent which specifically sets forth in column 1, lines 37-40, that the invention provides a safety cap for T-shaped fence post which is shaped so it may be installed over a fence post not easily removed therefrom, and in the preferred embodiment as set forth in column 1, lines 46-49, comprises an elongated generally hollow body having one open end and an integral dome shaped cover closing the other end. It is also stated in column 2, lines 45 and 46, that the cover 8 is integral with the end 10 of the body 4. In column 4, lines 3 and 4, it is stated that the safety cap 2 is integrally molded and comprises a linear low density material. In other words, the Hubbell reference, if anything, leads away from not towards the instant invention which comprises a sleeve which is open at both ends to fit over the fence post. The cap is provided separately and,

as indicated above, the sleeve may be produced by extrusion which is less expensive than molding. In addition, insofar as Claim 52 is concerned (as well as dependent Claim 53), Applicant's invention covers the entire post and thus provides a protection which is certainly not provided for the entire post by the Hubbell reference.

In paragraph 11, page 7 of the Official Action, Claim 24 was rejected under 35 U.S.C. §103 on the basis of the Hubbell reference. Here it is stated that Hubbell does not disclose the sleeve being made of extruded material, but that it would have been well within the level of ordinary skill in the art at the time the invention was made to make the sleeve of an extruded material for cheaper construction costs. It is further stated that the selection of a known material based on its suitability for the intended use is a design consideration within the skill of the art. However, this latter statement is misdirected inasmuch as Hubbell does only not teach producing a sleeve with extruded material, but specifically teaches just the opposite, that is making an integral cap and sleeve which is molded. As indicated above, this is set forth in several places and thus emphasized in the Hubbell reference. Moreover, relative to this rejection under 35 U.S.C. §103, it is a well settled principle that prior patents are references only for what they clearly disclose or suggest and that it is not proper use of a patent as a reference to modify its structure to one which prior art references do not suggest. Still further, when an obviousness rejection is based on a single prior art reference, there must be a substantive showing of a suggestion or modification to modify the teachings of that reference and this is not provided in the Official Action of September 6, 2002.

Reconsideration of Restriction Requirement is respectfully requested. In this connection, it will be appreciated that new Claims 49, 50, 52 and 53 are drawn to the Group II claims of the Restriction Requirement and Claim 51 is drawn to the Group I of the Restriction Requirement.

The statutory requirement for Restriction Requirement is that the claims be directed to independent and distinct inventions. In the Official Action, it is submitted that the distinctions set forth to the effect that the apparatus claims do not require the sleeve to be slipped over the post, just capable of being slipped over and that the sleeve can be formed around the post while still being capable of being slipped over the top of the post are differences which do not meet the requirements of 35 U.S.C. §121 for making a Restriction Requirement and, accordingly, the Restriction Requirement should be withdrawn. Moreover, it will be noted that Claim 48 includes the post, as such, and thus comprises, at least a linking claim, together with Claim 51 wherein the sleeve is forced substantially over the entire exposed surface of the post.

In general, it is submitted that persons desiring to learn of the scope of a patented invention should not be required to review more than one patent and prosecution history to make this needed evaluation. Thus as a matter of public policy, the issuance of multiple patents directed to what is essentially one invention should be avoided.

By the addition of dependent Claim 53, the total number of claims have been increased by one (1). Therefore, an additional fee of \$9.00 appears to be required and our check to cover same is submitted herewith. If in error, the Commissioner of Patents and Trademarks is authorized to debit our credit our Account No. 13-2000, as appropriate.

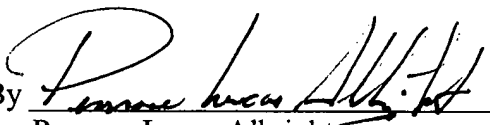
Further consideration and reexamination of this Application, in its amended form, is requested in view of 35 U.S.C. §132 and regulations in implementation thereof. It is submitted the Application in its amended form is free from ambiguity and avoids the references of record. It is further submitted the Examiner should have no difficulty in finding that the differences between the subject matter sought to be patented in this Application and prior art and usage within his expert knowledge are such that the subject matter as a whole would not have been

obvious at the time the invention was made to persons having ordinary skill in the art to which the subject matter of this Application pertains.

In view of the foregoing, the allowance of claims as now presented is earnestly solicited.

Respectfully submitted,

MASON, MASON & ALBRIGHT

By 
Penrose Lucas Albright
Registration No. 19,082

2306 South Eads Street
P.O. Box 2246
Arlington, VA 22202
Tel (703) 979-3242
Fax (703) 979-2526

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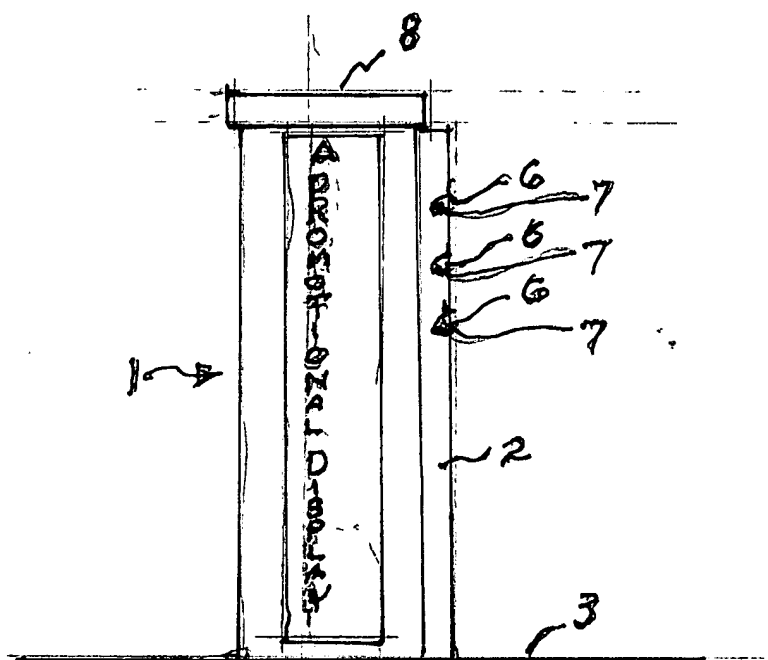


Fig. 4